



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. 51 OF 2014

FREDRICK RUGENDO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was convicted by the Principal Magistrate's court, Marimanti of one count of grievous harm contrary to section 234 of the Penal Code. He was sentenced to 4 years imprisonment on 2nd April 2014.
2. The Applicant seeks to be released on bail pending his appeal in the Notice of Motion dated 10th June 2014. There are 3 grounds cited on the face of the application namely:
 - a. **The Applicant is entitled to bail for the offence for which he was charged.**
 - b. **The Applicant's appeal has overwhelming chances of success.**
 - c. **The Applicant shall abide by all the terms of the bail.**
3. The counsel for the Applicant, Mr. Murango Mwenda has also sworn an affidavit in support of the application which I have considered.
4. The Respondent has filed a replying affidavit sworn by the Prosecution Counsel, Mr. Edwin Mulochi. The gist of the affidavit is that the court has to satisfy itself that there is an overwhelming probability the appeal will succeed. It is also contended that the application has not shown the existence of supervening (sic) compelling circumstances such as illness or loss of job to enable the court consider the application.
5. In his oral submissions, Mr. Mwenda urged that the evidence of identification was doubtful as complaint was attacked from behind and at night, and there was no other eye witness.
6. Mr. Mungai, Senior Prosecution Counsel urged that the grounds of identification urged by the Applicant cannot stand as the learned trial magistrate considered the circumstances of identification and found them good before convicting the Applicant.
7. I have considered the application. After an accused has been found guilty and convicted for an offence, he cannot claim to have a constitutional right to bail pending appeal. The Applicant must satisfy the court that he is deserving of the bail pending his appeal.
8. The principal consideration in an application for bail pending appeal is, the existence of exceptional or unusual circumstances upon which the appellate court can fairly conclude that it is in the interests of justice to grant bail. In **Dominic Karanja Vs. Republic** [1986] KLR 612 it was held as follows:

1. **“ The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.**
2. **The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors. Ill health perse would also not constitute an exceptional circumstance where there existed medical facilities for prisoners.”**
9. More principles are expounded by the Court of Appeal in the case of **Jivraj Shah vs. Republic** [1986] KLR 605 as follows:

“If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on an account of some substantial point of law to be urged and the sentence or substantial part of it will have been serve by the time the appeal is heard, conditions for granting bail will exist.”

10. Likewise in the case of **Mundia vs. Republic** [1986] KLR 623 where the court held:

1. **“ The Criminal Procedure Code (Cap 75) section 356 permits admission to bail pending appeal.**
2. **Admission to bail pending appeal is a discretionary power which the court must exercise judicially in accordance with laid down principles.**
3. **Once a person has been convicted and sentenced, his application for bail pending appeal will be granted only in exceptional circumstances.**
4. **There is a presumption that once a person is convicted he was properly convicted.**
5. **The chances of the appeal succeeding is a factor for consideration in arriving at a decision in an application for bail pending appeal.**
6. **Bail pending appeal may be granted where there is a risk that the sentence will have been served by the time the appeal will be heard but there must exist the major issue of overwhelming chances of the appeal in the first instance.”**

11. In this case the Applicant relies on the ground there is an overwhelming chance the appeal will succeed.

12. I have examined the evidence adduced before the lower court. I do not wish to pre-empt the appeal at this stage. However the ground urged by the Applicant of identification is an important one. The circumstances of the identification and the evidence of a single witness definitely raises an important point of law for the court to weigh in determining this pending appeal.

13. I have come to conclusion that the application for bail pending appeal has raised an important point of law. In addition the Applicant is likely to serve a substantial part of his sentence if this appeal is heard. I find merit and should be granted.

14. In the result I grant the Applicant bail pending appeal in the following terms:

- I. **The Applicant may be released on a bond of Kshs. 100,000/= with two sureties of same sum.**
- II. **Alternatively the Applicant may be released on cash bail of the sum of Kshs. 150,000/=**

DATED AND DELIVERED AT MERU THIS 17TH JULY, 2014.

LESIIT, J,

JUDGE